

**REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed July 15, 2003 ("Office Action"). At the time of the Office Action, Claims 4, 5, 10, 13-14, 16, 20-21, and 25 were pending and Claims 4, 5, and 10 were allowed. In the Office Action, the Examiner rejects Claims 13-14, 16, 20-21, and 25. Applicant amends Claims 13-14, 16, 20-21, and 25. Applicant does not admit that these amendments were necessary as a result of any cited art. No new matter has been introduced by these amendments.

**Section 101 Rejections**

The Examiner rejects Claims 13-14, 16, 20-21, and 25 under 35 U.S.C. 101. Applicant traverses the Examiner's position with regard to 35 U.S.C. 101 but amends Claims 13-14, 16, 20-21, and 25 to advance prosecution in this case. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 13-14, 16, 20-21, and 25.

**Section 103 Rejections**

The Examiner rejects Claims 10, 16, and 25 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,675,745 issued to Oku et al. ("*Oku*") in view of U.S. Patent No. 5,410,344 issued to Graves et al. ("*Graves*"), U.S. Patent No. 5,499,340 issued to Barritz ("*Barritz*"), and U.S. Patent No. 6,351,745 issued to Itakura et al. ("*Itakura*"). Applicant respectfully requests reconsideration and allowance of Claims 10, 16, and 25 on the basis that the *Itakura* reference does not qualify as "prior art" and its use in this rejection is therefore improper.

*Itakura* qualifies as art for purposes of 35 U.S.C. § 103(a) only under 35 U.S.C. § 102(e) because the issue date of *Itakura*, February 26, 2002, is subsequent to the filing date of the pending application, January 16, 1997. However, the § 102(e) date of *Itakura* is August 27, 1998 which is also subsequent to the filing date of the pending application, January 16, 1997 (see, e.g., application data on face of *Itakura*; and M.P.E.P. 2136.03 (II)(C)(1)). Moreover, pursuant to M.P.E.P. 2136.03(III) Priority From Provisional Application Under 35 U.S.C. 119(e), "...international applications which (1) were filed prior to November 29, 2000 ... may not be used to reach back (bridge) to an earlier filing date through a priority or benefit claim for prior art purposes under 35 U.S.C. 102(e)." Therefore, although *Itakura* references U.S. provisional application nos. 60/022,171 and 60/023,577 filed July 15, 1996 and August 19,

1996, respectively (*see e.g.*, application data on face of *Itakura*), these dates are not effective dates for purposes of establishing *Itakura* as “prior art.” See also, M.P.E.P. 706.02(f)(1), example 6. Therefore, *Itakura* does not qualify as “prior art” and its use in this rejection is improper. Applicant also traverses the Examiner’s interpretation of *Itakura* and reserves the right to discuss distinctions between Claims 10, 16, and 25 and the *Oku-Graves-Barritz-Itakura* combination, if necessary. For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claims 10, 16, and 25.

**CONCLUSION**

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Samir A. Bhavsar, Attorney for Applicant, at the Examiner's convenience at (214) 953-6581.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 05-765.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicant



Samir A. Bhavsar  
Reg. No. 41,617

Date: 9/26, 2003

Customer No. **35005**

Correspondence Address:  
BAKER BOTTS L.L.P.  
2001 Ross Avenue, Suite 600  
Dallas, Texas 75201-2980  
(214) 953-6581